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In re Application of	:	
Van Gestel et al.	:	OFFICE OF PETITIONS
Application No. 10/784,533	:	DECISION ON PETITION
Filed: February 23, 2004	:	
Attorney Docket No. PHN 14,818D	:	
	:	

This is a decision on the petition under 37 CFR 1.182, filed December 17, 2004, requesting that the above-identified application be accorded a filing date of February 23, 2004, instead of the present filing date of October 18, 2004.

On September 22, 2004, the Office sent applicants a Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted, indicating, inter alia, that the above-identified application had been accorded a filing date of February 23, 2004, and that Figures 10 and 11 appeared to be omitted.

On October 18, 2004, applicants submitted 10 sheets of drawings, including Figures 10 and 11, and a preliminary amendment requesting entry of Figures 10 and 11. In the Remarks section of the preliminary amendment, applicants stated that the addition of Figures 10 and 11 (drawing sheet 7/10) did not constitute new matter because the transmittal letter accompanying this application incorporated by reference the entire disclosure of the prior application, and the disclosure of the prior application included Figures 10 and 11.

Thereafter, the Office of Initial Patent Examination accorded the application a filing date of October 18, 2004, the date the omitted Figures were received by the Office.

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the

specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied).

Obviously, applicants intended to amend the application to include Figures 10 and 11, which were incorporated by reference. Applicants did not request that the Office accord the application the later filing date of October 18, 2004, the date of receipt of the omitted Figures. The application should have retained the original filing date of February 23, 2004, and the matter should have been referred to the examiner to review the preliminary amendment.

Accordingly, the record supports applicants' assertion that the Office erroneously changed the application filing date to October 18, 2004. The Office sincerely apologizes for the error.

Accordingly, the petition is granted. The \$400.00 petition fee is unnecessary and will be refunded to Deposit Account No. 14-1270.¹

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to February 23, 2004, using the drawing sheets submitted on that date, and for the mailing of a corrected filing receipt. Figures 10 and 11 will not be entered at this time.

Thereafter, the matter should be referred to Technology Center Art Unit 2621, for the examiner to review the amendment submitted on October 18, 2004, requesting entry of Figures 10 and 11 on the basis of incorporation by reference.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
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Office of Petitions

¹ The Office notes that the fee for a petition under 37 CFR 1.182 is \$400.00. The Office charged applicants' Deposit Account the current fee amount instead of the proffered fee of \$130.00.